

HON. THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

A.C., a minor by and through his guardian,  
MARIA CARBAJAL,

Plaintiffs,

v.

NINTENDO OF AMERICA, INC.,

Defendant.

C20-1694 TSZ

**PLAINTIFF'S UNOPPOSED  
MOTION AND ORDER FOR  
EXTENSION OF DEADLINE TO  
FILE MOTION FOR CLASS  
CERTIFICATION**

NOTE FOR MOTION CALENDAR:  
January 29, 2021

**INTRODUCTION**

Plaintiff hereby moves this Court pursuant to LCR 7(d)(2)(A) and 10(g) to extend the deadline set by Local Civil Rule 23(i)(3) for Plaintiff to move for class certification.

Plaintiff submits that good cause exists to extend the Local Civil Rule deadline for filing his motion for class certification because the deadline for Defendant to file a responsive pleading or motion to Plaintiff's Complaint and the briefing schedule related thereto has been extended by Court Order dated December 11, 2020. Thereafter, once the Court rules on any dispositive motion, the Parties will need to engage in discovery on Plaintiff's

1 remaining claims before Plaintiff can bring any motion for class certification given the  
 2 rigorous analysis standard required for class certification under Fed. R. Civ. P. 23.

3 Plaintiff has conferred with Defendant, and Defendant indicated that it does not  
 4 oppose the relief requested herein. In support of this motion, Plaintiff states as follows:

### 5 **BACKGROUND**

6 Plaintiff A.C., by and through his guardian, Maria Carbajal, filed his initial complaint  
 7 on November 17, 2020. *See* ECF No. 1.

8 On December 9, 2020, the Parties filed a Stipulation and [Proposed] Order  
 9 Regarding Briefing Schedule to extend the deadlines for Defendant to respond to Plaintiff's  
 10 Complaint. The Court entered a Minute Order on December 11, 2020 adopting the Parties'  
 11 proposed briefing schedule. ECF No. 13. Defendant's responsive pleading or motion will be  
 12 due on January 29, 2021. Any responsive motion shall be noted for March 22, 2021, any  
 13 opposition thereto shall be filed by March 1, 2021, and any reply shall be filed by the noting  
 14 date. *Id.*

15 On January 15, 2021, in response to a joint request from the Parties, the Court  
 16 extended the Federal Rule of Civil Procedure 26(f) deadline to April 19, 2021, and extended  
 17 the deadlines for the exchange of Initial Disclosures and the filing of a Joint Status Report to  
 18 May 3, 2021.

19 LCR 23(i)(3) requires Plaintiff to file a motion for class certification within 180 days  
 20 after the filing of their initial complaint commencing this class action, i.e., by **May 16, 2021**.

### 21 **ARGUMENT**

22 This Court has broad discretion in determining whether to extend the deadline for filing  
 23 a class certification motion set by LCR 23(i)(3). *See, e.g., Rocha v. Yoshinoya W., Inc.,*

1 No. CV 06-00487 MMM (AJWx), 2006 U.S. Dist. LEXIS 101445, at \*7 (C.D. Cal. Dec. 29,  
 2 2006) (“District courts have broad discretion to enforce [a class certification deadline local]  
 3 rule.”); *see also Blough v. Shea Homes, Inc.*, No. C12-1493 RSM, 2014 U.S. Dist. LEXIS  
 4 50606, at \*6 (W.D. Wash. Apr. 10, 2014) (discussing LCR 23(a)(i)(3) and acknowledging that  
 5 “there is no hard and fast rule to the precise stage in litigation when class certification must be  
 6 determined.”). Courts recognize that a class certification briefing schedule contemplated by this  
 7 type of local rule, “when considered alongside federal rules regarding status conferences and  
 8 the timing of discovery,” can be “unrealistic in light of recent case law regarding the need to  
 9 establish a sufficient factual record at the class certification stage.” *See Balser v. Hain*  
 10 *Celestial Grp., Inc.*, 640 F. App’x 694, 696 (9th Cir. 2016). Indeed, in *Wal-Mart Stores, Inc. v.*  
 11 *Dukes*, the Supreme Court, stated that “Rule 23 does not set forth a mere pleading standard. A  
 12 party seeking class certification must affirmatively demonstrate his compliance with the Rule—  
 13 that is, he must be prepared to prove that there are in fact sufficiently numerous parties,  
 14 common questions of law or fact, etc.” 564 U.S. 338, 350 (2011); *see also* FED. R. CIV. P. 23.  
 15 “Before certifying a class, the Court must conduct a ‘rigorous analysis’ to determine whether  
 16 Plaintiffs have met the requirements of Rule 23.” *Fowler v. Guerin*, No. C15-5367 BHS, 2019  
 17 U.S. Dist. LEXIS 124416, at \*4 (W.D. Wash. July 25, 2019) (citation omitted). This Court  
 18 granted a similar motion to extend the deadline to file motion for class certification in *Diaz v.*  
 19 *Nintendo of America, Inc.*, No. 19-cv-1116-TSZ (W.D. Wash. Dec. 6, 2019), ECF No. 34.

20 The discovery necessary to support and oppose a class certification motion will require  
 21 significantly more time than contemplated by the current May 16, 2021 deadline under  
 22 LCR 23(i)(3). Thus, there is good cause to relieve Plaintiff of the current May 16, 2021 class  
 23 certification brief deadline (including Defendant’s subsequent deadline with respect to any

1 opposition) under LCR 23(i)(3). This matter therefore requires exemption from LCR 23(i)(3).  
 2 Plaintiff represents that he has not made this motion for purposes of delay, and he has not  
 3 previously sought an extension of the class certification briefing deadline.

#### 4 **CONCLUSION**

5 WHEREFORE, Plaintiff requests that the Court grant this unopposed motion and  
 6 extend Plaintiff's deadline to move for class certification. Plaintiff further requests that the  
 7 Court allow Plaintiff 15 days following the decision by the Court on Nintendo's responsive  
 8 motion to propose a new deadline for Plaintiff's motion for class certification.

9 Respectfully submitted,

10 **TOUSLEY BRAIN STEPHENS PLLC**

11 Date: January 21, 2021

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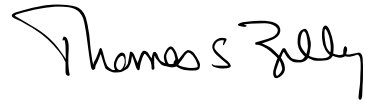
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*Counsel for Plaintiffs*

**ORDER**

The Court hereby GRANTS Plaintiff's Motion to Extend Deadline for Plaintiff to File Motion for Class Certification. The parties are directed to propose a class certification briefing schedule by stipulation within 15 days following the decision by the Court on Nintendo's responsive motion.

IT IS SO ORDERED this 27th day of January, 2021.



Thomas S. Zilly  
United States District Judge

4817-9613-8456, v. 1